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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections 11)
and 13 of the Cable Television)
Consumer Protection and Competition)
Act of 1992)
)
Horizontal and Vertical Ownership)
Limits, Cross-Ownership Limitations)
and Anti-trafficking Provisions)

MM Docket No. 92-264

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments in response to the Notice of Proposed Rule Making and Notice of Inquiry, ("NPRM/NOI"), released by the Federal Communications Commission ("Commission") in this docket on December 28, 1992.

In this NPRM/NOI, the Commission is seeking comments on rules to implement Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act"). Section 13 contains the cable anti-trafficking rule which, with certain exceptions, prohibits the sale or transfer of ownership in a cable system within three years following the acquisition or initial construction of the system. Section 11 establishes restrictions on cross-ownership and requires the Commission to conduct a proceeding prescribing subscriber limits and channel occupancy limits. It also requires the Commission to consider whether additional restrictions are required to limit the ability

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of multichannel distributors to engage in the creation or production of video programming.

NTCA is a national association of approximately 500 small and rural local exchange carriers ("LECs") providing telecommunications services to interexchange carriers ("IXCs") and subscribers across rural America. Its comments at this stage are limited to the Commission's proposal to implement that portion of Section 11 of the Act which amends Section 613(a) of the Communications Act of 1934 to add a prohibition against common ownership of a cable system and either a Multichannel Multipoint Distribution ("MMDS") or a Satellite Master Antenna Television Service ("SMATV"). The restriction does not apply outside the Cable Television ("CATV") franchise area.

NTCA members will be affected by the proposal to retain the existing MMDS/CATV cross-ownership regulations to implement Section 11. Approximately 150 of NTCA's members have franchises to operate small cable television systems in their telephone service areas. Most of these members provide service under the rural exemption in 47 C.F.R. § 63.58. The exemption allows telephone companies to operate CATV systems in their telephone service areas. Some NTCA members with CATV systems also provide MMDS; others provide MMDS but not CATV.

The Commission believes its recently adopted rules implementing a MMDS/CATV cross-ownership prohibition satisfy the fundamental purposes of the Section 11 prohibition. These rules prohibit an MMDS company from owning, leasing, or controlling a

CATV system in a geographic area which overlaps the MMDS protected service area. The rules apply to cable franchise areas lacking two or more competing cable television companies. They contain an exception for rural areas similar to the 2,500 cable/telco cross-ownership exception. The exception permits CATV operators in rural areas to use MMDS to provide service to parts of their cable franchise area where economies of scale and technological difficulties make CATV service uneconomic or infeasible.

The Commission granted the rural exemption in Second Report and Order, in General Docket Nos. 90-54 and 80-113, 6 FCC Rcd 6792 (1992) on the basis of a record demonstrating that the exemption was needed to speed the introduction of multichannel service in sparsely populated areas. Id. at ¶ 37. Now the Commission has a clear directive in Section 11 of the Act giving it the authority to waive cross-ownership prohibitions "to ensure that all significant portions of a franchise area are able to obtain video programming." This authority clearly encompasses the enactment of a rural exemption to assure that sparsely populated areas obtain multichannel services. In view of this obvious consistency between the existing regulations and Section 11, NTCA urges the Commission to retain the rural exemption contained in 47 C.F.R. § 21.912(d)(1).

CONCLUSION

For the above stated reasons, NTCA agrees with the Commission's tentative conclusion that 47 C.F.R. § 21.912(d) should be retained.

Respectfully submitted,

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ASSOCIATION

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February 9, 1993

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing
Comments of the National Telephone Cooperative Association in MM
Docket No. 92-264 was served on this 9th day of February 1993, by
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